

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14610, of Doris Clark, as amended, and pursuant to 11 DCMR 3108.1, for a special exception under Sub-section 2003.1, to extend an existing nonconforming use, a child development center for 38 students, 2-5 years, three staff, and under Section 205 to establish a child development center for 58 students, infant to 12 years, twelve teachers in an R-4 District at premises 1838 - 3rd Street, N.E., (Square 3568, Lot 805).

HEARING DATES: May 20, 1987 and September 23, 1987  
DECISION DATE: October 7, 1987

FINDINGS OF FACT:

1. The subject site is an L-shaped lot located at 1838 Third Street, N.E., between Seaton Place and T Street.

2. The lot is located in an R-4 District which extends from 4th Street, N.E., to 7th Street, N.W., and from Florida Avenue to the McMillan Reservoir.

3. A one-and-two-story building occupies the front of the lot. The basement and first floor of the building house a child development center; the second floor is vacant. A two-car garage occupies the southern corner at the rear of the lot and is connected to third street by a driveway. The rear of the lot also contains a play area which is completely enclosed except where the area abuts the rear yard at 225 T Street, N.E. The property at 225 I Street is also owned by the applicant.

4. Of the thirty-eight children enrolled at the center, sixteen are two years old, twelve are infants, and ten are preschoolers. The center employs six staff members.

5. The applicant intends to increase enrollment to fifty-eight children and expand the center's operation to the second floor of the building. The expanded facility would employ twelve staff members.

6. Certificate of Occupancy No. B149742 permits the center to employ six staff members and to have an enrollment of thirty-eight children between the ages of twelve months and two years. On August 13, 1986, the Service Facility Regulation Administration (SFRA) of the Department of Consumer and Regulatory Affairs issued a one year permit which allowed the center to operate with twenty-six children

between the ages of two and fourteen, and twelve children under the ages of two. In a memorandum dated August 18, 1987 and written in response to the Board's referral, the SFRA indicated that the proposed expansion would comply with all licensing requirements pursuant to DCMR 29, Public Welfare.

7. Although a few of the additional twenty children would walk to and from the center, many would be driven by car. The resulting increase in traffic congestion would produce hazardous conditions for children and motorists.

8. The applicant contends that the driveway would provide sufficient space for cars to safely park while dropping-off or picking-up children. The Board does not agree.

9. In a letter to the center's Executive Director dated June 8, 1987, the District Zoning Administrator indicated that the applicant must provide no fewer than three off-street spaces for the twelve employees expected to work at the center. The applicant presently provides only two off-street spaces.

10. The play area at the rear of the lot is adjacent to several other lots in the square. Its proximity to these lots would permit the noise created by the additional children to have an adverse impact on neighboring property.

11. The applicant contends that the noise produced as a result of the expansion would be no greater than that produced by the present facility because most of the new children would be infants and would spend less time outdoors.

12. No other child development center is located in the same square or within one-thousand feet of the subject site.

13. The Board referred the application to the Office of Planning (OP) on March 26, 1988 and to the Department of Consumer and Regulatory Affairs on August 10, 1987. The Board finds the local residents' testimony about traffic congestion to be determinative of the dangerous condition which would result from the proposed expansion. Consequently, the Board finds that it need not refer the application to the Department of Public Works for review or report.

14. An SP-1 District is the least restrictive district to permit the operation of a development center for fifty-eight children is also permitted as a matter-of-right in an SP-1 District.

15. The applicant argued that the expansion would provide the neighborhood with desperately needed day care

services. The Board concurs with this finding, but notes that the applicant must show more than need to qualify for relief.

16. The lot is within the jurisdiction of Advisory Neighborhood Commission (ANC) 5C. In a letter dated May 11, 1987, the ANC indicated that it had voted to oppose the proposed expansion because it would generate trash, litter, noise, and traffic, and would have an adverse impact on the neighborhood. The Board concurs with the ANC's findings and gives them "great weight" in its decision.

17. In a memorandum dated September 15, 1987, the Office of Planning (OP) recommended that the Board deny the applicant's request for relief because the proposed expansion would generate additional trash, litter, noise and traffic and are concerned about the applicant's failure to maintain the property at 225 T Street, N.E. The Board concurs with the OP's recommendation.

CONCLUSIONS OF LAW AND OPINION:

The applicant is seeking a special exception pursuant to 11 DCMR 3108.1 to permit the extension of a nonconforming use under Sub-section 2003.1 to establish a child development center under Section 205 for fifty-eight children, infants to age twelve and twelve staff members. To qualify for a special exception, the applicant must demonstrate that she has satisfied all the requirements of Sub-section 2003.1 and Section 205, and that an exception would be in harmony with the purpose and intent of the Zoning Regulations and maps and would not adversely affect the use of neighboring property.

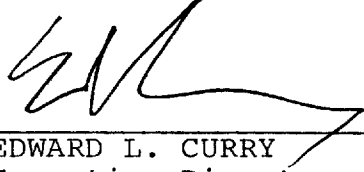
Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant has failed to meet the requirements of Section 205 and Sub-sections 3108.1 and 2003.1. The applicant has shown that the center would be a neighborhood facility, but has failed to show that the noise and traffic it would generate would not be objectionable or adversely affect the present character of the neighborhood. The applicant has also failed to demonstrate that she would provide sufficient off-street parking for visitors and staff. Consequently, the Board is unable to conclude that an exception would be in harmony with the intent of the Zoning Regulations and maps and would not adversely affect the use of neighboring property. The Board has accorded the ANC the "great weight" to which it is entitled.

It is therefore ORDERED that the application is DENIED.

VOTE: 3-0 (Paula L. Jewell, William F. McIntosh, and Charles R. Norris to deny; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
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EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: OCT 28 1999

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14610order/LJP41

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14610

As Acting Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated OCT 28 1968, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard Bradford  
1824 3rd St. N.E.  
D.C. 20002

James Minard  
1103 E. Capitol St. S.E.  
D.C. 20003

Daniel L. Robinson, Chairperson  
Advisory Neighborhood Commission 5-C  
1723 - 3rd Street, N.E.  
Washington, D. C. 20002

Mary H. Pittman  
223 T Street, N.E.  
Wash, D.C. 20002

Florence H. Pendleton  
147 S St., N.W.  
Wash, D.C. 20001

Laura Freeman  
CCCCDC  
1838 3rd Street, N.E.  
Wash, D.C. 20002

Doris Clark  
1320 Lee Gate Road, N.W.  
D.C. 20012

Joy Mason, Esq.  
631 S. Fairfax Street  
Alexandria, VA. 22314

A handwritten signature in dark ink, appearing to read "E. L. Curry", is written over a horizontal line.

EDWARD L. CURRY  
Executive Director

DATE: OCT 28 1968